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Supreme Court, U.S.
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No. 92-1797

In The

Supreme Court Of The United States

OCTOBER TERM, 1993

JAMES H. NADEAU,

Petitioner,

v.

C. MICHAEL BUDLONG and
THE STATE OF CONNECTICUT,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT
FROM THE SUPREME COURT OF THE
STATE OF CONNECTICUT

REPLY TO BRIEF OF RESPONDENT, C. MICHAEL BUDLONG

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I. RESPONDENT'S BRIEF MIS-INFORMS THIS COURT OF THE FACTS

A. The Opening sentence of Respondent's Argument (p.2) is a blatantly false statement of the Facts. It is obviously intended to mis-inform this Court so that it will deny a Writ of Certiorari to the handicapped Petitioner. Respondent falsely states:

> "(t)here was never a finding by the trial court that Petitioner was hard of hearing." (p. 2)

The record is replete with the opposite fact, as follows:

First, the Connecticut Appellate Court's memorandum of decision states that the trial court, *"upon determining that the defendant had a hearing problem,* allowed the assistant to sit with the defendant at the counsel table, provided that she follow strict guidelines." (Emphasis added) (see Petitioner's original Appendix, p. 6A).

Second, commencing on the first day of trial, the trial judge made the following statements:

1. ". . . I'm satisfied that Mr. Nadeau has difficulty hearing." (8-13-91, p. 53);

2. "The person next to Mr. Nadeau is there to assist him because he does not hear at a normal – doesn't hear normally, I guess is the word I'm looking for." (8-13-91, p. 99);

3. "I know you have trouble hearing, and I apologize for speaking so loudly, but I'm satisfied it's

the only way I can get across to you." (8-13-91, p. 156-7);

4. "And your problem is partially, to be sure, defective hearing . . ." (8-15-91, p. 50);

5. "I know you have a hearing problem. So I first want to understand if you heard all the words that I just said." (8-28-91, p. 5);

6. "And with a hearing problem on top of it, it's been something of a difficulty for me." (8-28-91. p. 6).

B. Respondent's "Statement of the Case" falsely states:

"At no time did the Petitioner indicate he could not hear the proceedings." (p. 2)

The record is replete with the opposite fact, as follows:

First, the Connecticut Appellate Court's memorandum of decision states that: "(a)t the opening of the trial, the defendant requested that, because he has some difficulty hearing, he be allowed to have a friend repeat things said during the course of the trial, or write things down for him." (see Petitioner's original Appendix, p. 6A).

Second, commencing on the first day of juror voir dire, Petitioner continuously advised the court of his hearing difficulty, as follows:

1. MR. NADEAU: And – well, I don't know, I didn't hear a word she says. I'm hard of hearing. (8-8-91, p. 14);

2. MR. NADEAU: I didn't hear you. (8-8-91, p. 33);

3. THE COURT: You're having trouble hearing?
MR. NADEAU: Somewhat, yes, Your Honor.
(8-8-91, p. 35);

4. THE COURT: Did you hear that?
MR. NADEAU: No, I didn't hear that.
(8-13-91, p. 4);

5. THE COURT: Did you not hear me or did you not understand?
MR. NADEAU: Certain words – sounds I can't hear. So I didn't know what you pronounced. I didn't hear the word.
THE COURT: All right. Because I'm speaking just as loud as I –
MR. NADEAU: It's not that. There are certain sounds I can't hear.
(8-13-91, p. 30);

6. MR. NADEAU: And could you tell her to stop, you know, mumbling, and that's all I hear. See, I didn't hear that last remark from her. And I believe at times she does it on purpose, Your Honor.
THE COURT: Mr. Nadeau, one, Attorney Murrett is not mumbling.
(8-13-91, p. 51);

7. MR. NADEAU: I want to remind her that many of the things she said already I haven't heard.
(8-13-91, p. 52);

8. MS. MURRETT: Mr. Nadeau, if you can't hear me, just please stop me.
   MR. NADEAU: I can't hear you.
   (8-15-91, p. 18);

9. MR. NADEAU: I didn't hear you.
   (8-15-91, p. 19);

10. THE COURT: Did you hear the question?
    MR. NADEAU: On the tape?
    THE COURT: Yes.
    MR. NADEAU: No, I didn't.
    (8-15-91, p. 36);

11. MR. NADEAU: I didn't hear that, Your Honor.
    (8-15-91, p. 71);

12. MR. NADEAU: I missed half of her sentence.
    (8-16-91, p. 32);

13. MR. NADEAU: What was said, Your Honor? I couldn't hear a word she said.
    (8-16-91, p. 76-7);

14. THE COURT: Now, exceptions to the charge from the defendant. And if you wish me to try to explain what it was that the other side just said, I'll try to do that as well.
    MR. NADEAU: Yes, Your Honor.
    (8-16-91, p. 142);

15. MR. NADEAU: I didn't hear what she said, the last statement.
    (8-28-91, p. 89);

16. MR. NADEAU: I need a best friend to stand here and let me hear and tell me what was said.
(8-28-91, p. 90)

* * * *

II. RESPONDENT'S LEGAL ARGUMENT IS SPECIFICALLY CONTRADICTED BY CONNECTICUT'S CONSTITUTION

A. Respondent incorrectly argues that the physically handicapped Petitioner is not entitled to equal protection, stating:

> "In order to make out an equal protection claim for denial of access to courts, the Petitioner must allege discrimination based on poverty, race or some other reasonable classification." (p. 4, Respondent's Argument)

Opposite to Respondent's legal argument, the Constitution of Connecticut specifically establishes that "equal protection of the law" shall not be denied to any person because of *"physical disability"*.

ARTICLE XXI, of the Amendments to the Constitution of Connecticut, states:

> *"No person shall be denied the equal protection of the law* nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights *because of* religion, race, color, ancestry, national origin, sex or *physical* or mental *disability."* (emphasis added)

III. CONCLUSION

Based upon the reasons stated, the Petition For A Writ Of Certiorari should be granted.

Respectfully submitted,

Petitioner
JAMES H. NADEAU